

97TH CONGRESS
2D SESSION

H. R. 6597

To amend title 5, United States Code, to provide permanent authorization for Federal agencies to use flexible and compressed employee work schedules.

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 1982

Ms. FERRARO introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To amend title 5, United States Code, to provide permanent authorization for Federal agencies to use flexible and compressed employee work schedules.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Employees Flexi-
4 ble and Compressed Work Schedules Act of 1982".

5 SEC. 2. (a) Chapter 61 of title 5, United States Code, is
6 amended—

7 (1) by inserting before section 6101 the following:

1 “SUBCHAPTER I—GENERAL PROVISIONS”;

2 and

3 (2) by adding at the end thereof the following new
4 subchapter:

5 “SUBCHAPTER II—FLEXIBLE AND COMPRESSED
6 WORK SCHEDULES

7 “§ 6120. Purpose

8 “The Congress finds that the use of flexible and com-
9 pressed work schedules has the potential to improve produc-
10 tivity in the Federal Government and provide greater service
11 to the public.

12 “§ 6121. Definitions

13 “For purposes of this subchapter—

14 “(1) ‘agency’ means any Executive agency, any
15 military department, and the Library of Congress;

16 “(2) ‘employee’ has the meaning given it by sec-
17 tion 2105 of this title;

18 “(3) ‘basic work requirement’ means the number
19 of hours, excluding overtime hours, which an employee
20 is required to work or is required to account for by
21 leave or otherwise;

22 “(4) ‘credit hours’ means any hours, within a
23 flexible schedule established under section 6122 of this
24 title, which are in excess of an employee’s basic work

1 requirement and which the employee elects to work so
2 as to vary the length of a workweek or a workday;

3 “(5) ‘compressed schedule’ means—

4 “(A) in the case of a full-time employee, an
5 80-hour biweekly basic work requirement which is
6 scheduled for less than 10 workdays, and

7 “(B) in the case of a part-time employee, a
8 biweekly basic work requirement of less than 80
9 hours which is scheduled for less than 10 work-
10 days;

11 “(6) ‘overtime hours’, when used with respect to
12 flexible schedule programs under sections 6122 through
13 6126 of this title, means all hours in excess of 8 hours
14 in a day or 40 hours in a week which are officially or-
15 dered in advance, but does not include credit hours;

16 “(7) ‘overtime hours’, when used with respect to
17 compressed schedule programs under sections 6127
18 and 6128 of this title, means any hours in excess of
19 those specified hours which constitute the compressed
20 schedule; and

21 “(8) ‘collective bargaining’, ‘collective bargaining
22 agreement’, and ‘exclusive representative’ have the
23 same meanings given such terms—

1 “(A) by section 7103(a) (8), (12), and (16) of
2 this title, respectively, in the case of any unit cov-
3 ered by chapter 71 of this title; and

4 “(B) in the case of any other unit, by the
5 corresponding provisions applicable under the per-
6 sonnel system covering such unit.

7 **“§ 6122. Flexible schedules; agencies authorized to use**

8 “(a) Notwithstanding section 6101 of this title, each
9 agency may establish, in accordance with this subchapter,
10 programs which allow the use of flexible schedules which in-
11 clude—

12 “(1) designated hours and days during which an
13 employee on such a schedule must be present for work;
14 and

15 “(2) designated hours during which an employee
16 on such a schedule may elect the time of such employ-
17 ee’s arrival at and departure from work, solely for such
18 purpose or, if and to the extent permitted, for the pur-
19 pose of accumulating credit hours to reduce the length
20 of the workweek or another workday.

21 An election by an employee referred to in paragraph (2) shall
22 be subject to limitations generally prescribed to ensure that
23 the duties and requirements of the employee’s position are
24 fulfilled.

1 “(b) Notwithstanding any other provision of this sub-
2 chapter, but subject to the terms of any collective bargaining
3 agreement referred to in section 6130(a) of this title, if the
4 head of an agency determines that any organization within
5 the agency which is participating in a program under subsec-
6 tion (a) is being substantially disrupted in carrying out its
7 functions or is incurring additional costs because of such par-
8 ticipation, such agency head may—

9 “(1) restrict the employees’ choice of arrival and
10 departure time,

11 “(2) restrict the use of credit hours, or

12 “(3) exclude from such program any employee or
13 group of employees.

14 **“§ 6123. Flexible schedules; computation of premium pay**

15 “(a) For purposes of determining compensation for over-
16 time hours in the case of an employee participating in a pro-
17 gram under section 6122 of this title—

18 “(1) the head of an agency may, on request of the
19 employee, grant the employee compensatory time off in
20 lieu of payment for such overtime hours, whether or
21 not irregular or occasional in nature and notwithstand-
22 ing the provisions of sections 5542(a), 5543(a)(1),
23 5544(a), and 5550 of this title, section 4107(e)(5) of
24 title 38, section 7 of the Fair Labor Standards Act (29
25 U.S.C. 207), or any other provision of law; or

1 “(2) the employee shall be compensated for such
2 overtime hours in accordance with such provisions, as
3 applicable.

4 “(b) Notwithstanding the provisions of law referred to in
5 subsection (a)(1) of this section, an employee shall not be en-
6 titled to be compensated for credit hours worked except to
7 the extent authorized under section 6126 of this title or to
8 the extent such employee is allowed to have such hours taken
9 into account with respect to the employee’s basic work re-
10 quirement.

11 “(c)(1) Notwithstanding section 5545(a) of this title, pre-
12 mium pay for nightwork will not be paid to an employee
13 otherwise subject to such section solely because the employee
14 elects to work credit hours, or elects a time of arrival or
15 departure, at a time of day for which such premium pay is
16 otherwise authorized, except that—

17 “(A) if an employee is on a flexible schedule
18 under which—

19 “(i) the number of hours during which such
20 employee must be present for work, plus

21 “(ii) the number of hours during which such
22 employee may elect to work credit hours or elect
23 the time of arrival at and departure from work,
24 which occur outside of the nightwork hours designated
25 in or under such section 5545(a) total less than 8

1 hours, such premium pay shall be paid for those hours
2 which, when combined with such total, do not exceed
3 8 hours, and

4 “(B) if an employee is on a flexible schedule
5 under which the hours that such employee must be
6 present for work include any hours designated in or
7 under such section 5545(a), such premium pay shall be
8 paid for such hours so designated.

9 “(2) Notwithstanding section 5343(f) of this title, and
10 section 4107(e)(2) of title 38, night differential will not be
11 paid to any employee otherwise subject to either of such sec-
12 tions solely because such employee elects to work credit
13 hours, or elects a time of arrival or departure, at a time of
14 day for which night differential is otherwise authorized,
15 except that such differential shall be paid to an employee on
16 a flexible schedule under this subchapter—

17 “(A) in the case of an employee subject to subsec-
18 tion (f) of such section 5343, for which all or a major-
19 ity of the hours of such schedule for any day fall be-
20 tween the hours specified in such subsection, or

21 “(B) in the case of an employee subject to subsec-
22 tion (e)(2) of such section 4107, for which 4 hours of
23 such schedule fall between the hours specified in such
24 subsection.

1 **“§ 6124. Flexible schedules; holidays**

2 “Notwithstanding sections 6103 and 6104 of this title,
3 if any employee on a flexible schedule under section 6122 of
4 this title is relieved or prevented from working on a day des-
5 ignated as a holiday by Federal statute or Executive order,
6 such employee is entitled to pay with respect to that day for
7 8 hours (or, in the case of a part-time employee, an appropri-
8 ate portion of the employee's biweekly basic work require-
9 ment as determined under regulations prescribed by the
10 Office of Personnel Management).

11 **“§ 6125. Flexible schedules; time-recording devices**

12 “Notwithstanding section 6106 of this title, the Office of
13 Personnel Management or any agency may use recording
14 clocks as part of programs under section 6122 of this title,
15 and the Bureau of Engraving and Printing may use recording
16 clocks to record time and attendance of employees of such
17 Bureau without regard to whether the use of recording clocks
18 is part of a program under section 6122 of this title.

19 **“§ 6126. Flexible schedules; credit hours; accumulation**
20 **and compensation**

21 “(a) Subject to any limitation prescribed by the Office of
22 Personnel Management or the agency, a full-time employee
23 on a flexible schedule can accumulate not more than 24
24 credit hours, and a part-time employee can accumulate not
25 more than one-fourth of the hours in such employee's biweek-
26 ly basic work requirement, for carryover from a biweekly pay

1 period to a succeeding biweekly pay period for credit to the
2 basic work requirement for such period.

3 “(b) Any employee who is on a flexible schedule pro-
4 gram under section 6122 of this title and who is no longer
5 subject to such a program shall be paid at such employee’s
6 then current rate of basic pay for—

7 “(1) in the case of a full-time employee, not more
8 than 24 credit hours accumulated by such employee, or

9 “(2) in the case of a part-time employee, the
10 number of credit hours (not excess of one-fourth of the
11 hours in such employee’s biweekly basic work require-
12 ment) accumulated by such employee.

13 **“§ 6127. Compressed schedules; agencies authorized to use**

14 “(a) Notwithstanding section 6101 of this title, each
15 agency may establish programs which use a 4-day workweek
16 or other compressed schedule.

17 “(b)(1) An employee in a unit not represented by an
18 exclusive representative shall not be required to participate in
19 any program under subsection (a) unless a majority of the
20 employees in such unit who, but for this paragraph, would be
21 included in such program have voted to be so included.

22 “(2) Upon written request to any agency by an employ-
23 ee, the agency, if it determines that participation in a pro-
24 gram under subsection (a) would impose a personal hardship
25 on such employee, shall—

10.

1 “(A) except such employee from such program; or

2 “(B) reassign such employee to the first position

3 within the agency—

4 “(i) which becomes vacant after such deter-
5 mination,

6 “(ii) which is not included within such pro-
7 gram,

8 “(iii) for which such employee is qualified,
9 and

10 “(iv) which is acceptable to the employee.

11 A determination by an agency under this paragraph shall be
12 made not later than 10 days after the day on which a written
13 request for such determination is received by the agency.

14 **“§ 6128. Compressed schedules; computation of premium**
15 **pay**

16 “(a) The provisions of sections 5542(a), 5544(a), and
17 5550(2) of this title, section 4107(e)(5) of title 38, section 7
18 of the Fair Labor Standards Act (29 U.S.C. 207), or any
19 other law, which relate to premium pay for overtime work,
20 shall not apply to the hours which constitute a compressed
21 schedule.

22 “(b) In the case of any full-time employee, hours worked
23 in excess of the compressed schedule shall be overtime hours
24 and shall be paid for as provided by the applicable provisions
25 referred to in subsection (a) of this section. In the case of any

1 part-time employee on a compressed schedule, overtime pay
2 shall begin to be paid after the same number of hours of work
3 after which a full-time employee on a similar schedule would
4 begin to receive overtime pay.

5 “(c) Notwithstanding section 5544(a), 5546(a), or
6 5550(1) of this title, or any other applicable provision of law,
7 in the case of any full-time employee on a compressed sched-
8 ule who performs work (other than overtime work) on a tour
9 of duty for any workday a part of which is performed on a
10 Sunday, such employee is entitled to pay for work performed
11 during the entire tour of duty at the rate of such employee’s
12 basic pay, plus premium pay at a rate equal to 25 percent of
13 such basic pay rate.

14 “(d) Notwithstanding section 5546(b) of this title, an
15 employee on a compressed schedule who performs work on a
16 holiday designated by Federal statute or Executive order is
17 entitled to pay at the rate of such employee’s basic pay, plus
18 premium pay at a rate equal to such basic pay rate, for such
19 work which is not in excess of the basic work requirement of
20 such employee for such day. For hours worked on such a
21 holiday in excess of the basic work requirement for such day,
22 the employee is entitled to premium pay in accordance with
23 the provisions of section 5542(a) or 5544(a) of this title, as
24 applicable, or the provisions of section 7 of the Fair Labor

1 Standards Act (29 U.S.C. 207) whichever provisions are
2 more beneficial to the employee.

3 **"§ 6129. Administration of leave and retirement provisions**

4 "For purposes of administering sections 6303(a), 6304,
5 6307 (a) and (c), 6323, 6326, and 8339(m) of this title, in the
6 case of an employee who is in any program under this sub-
7 chapter, references to a day or workday (or to multiples or
8 parts thereof) contained in such sections shall be considered
9 to be references to 8 hours (or to the respective multiples or
10 parts thereof).

11 **"§ 6130. Application of programs in the case of collective**
12 **bargaining agreements**

13 "(a)(1) In the case of employees in a unit represented by
14 an exclusive representative, any flexible or compressed work
15 schedule, and the establishment and termination of any such
16 schedule, shall be subject to the provisions of this subchapter
17 and the terms of a collective bargaining agreement between
18 the agency and the exclusive representative.

19 "(2) Employees within a unit represented by an exclu-
20 sive representative shall not be included within any program
21 under this subchapter except to the extent expressly provided
22 under a collective bargaining agreement between the agency
23 and the exclusive representative.

24 "(b) An agency may not participate in a flexible or com-
25 pressed schedule program under a collective bargaining

1 agreement which contains premium pay provisions which are
2 inconsistent with the provisions of section 6123 or 6128 of
3 this title, as applicable.

4 **“§ 6131. Criteria and review**

5 “(a) Notwithstanding the preceding provisions of this
6 subchapter or any collective bargaining agreement and sub-
7 ject to subsection (c) of this section, if the head of an agency
8 finds that a particular flexible or compressed schedule under
9 this subchapter has had or would have an adverse agency
10 impact, the agency shall promptly determine not to—

11 “(1) establish such schedule; or

12 “(2) continue such schedule, if the schedule has
13 already been established.

14 “(b) For purposes of this section, ‘adverse agency
15 impact’ means—

16 “(1) a reduction of the productivity of the agency;

17 “(2) a diminished level of services furnished to the
18 public by the agency; or

19 “(3) an increase in the cost of agency operations.

20 “(c)(1) This subsection shall apply in the case of any
21 schedule covering employees in a unit represented by an ex-
22 clusive representative.

23 “(2)(A) If an agency and an exclusive representative
24 reach an impasse in collective bargaining with respect to an
25 agency determination under subsection (a)(1) not to establish

1 a flexible or compressed schedule, the impasse shall be pre-
2 sented to the Federal Service Impasses Panel (hereinafter in
3 this section referred to as the 'Panel').

4 “(B) The Panel shall promptly consider any case pre-
5 sented under subparagraph (A), and shall take final action in
6 favor of the agency's determination if the finding on which it
7 is based is supported by evidence that the schedule is likely
8 to cause an adverse agency impact.

9 “(3)(A) If an agency and an exclusive representative
10 have entered into a collective bargaining agreement provid-
11 ing for use of a flexible or compressed schedule under this
12 subchapter and the head of the agency determines under sub-
13 section (a)(2) to terminate a flexible or compressed schedule,
14 the agency may reopen the agreement to seek termination of
15 the schedule involved.

16 “(B) If the agency and exclusive representative reach an
17 impasse in collective bargaining with respect to terminating
18 such schedule, the impasse shall be presented to the Panel.

19 “(C) The Panel shall promptly consider any case pre-
20 sented under subparagraph (B), and shall rule on such im-
21 passe not later than 60 days after the date the Panel is pre-
22 sented the impasse. The Panel shall take final action in favor
23 of the agency's determination to terminate a schedule if the
24 finding on which the determination is based is supported by

1 evidence that the schedule has caused an adverse agency
2 impact.

3 “(D) Any such schedule may not be terminated until—

4 “(i) the agreement covering such schedule is re-
5 negotiated or expires or terminates pursuant to the
6 terms of that agreement; or

7 “(ii) the date of the Panel’s final decision, if an
8 impasse arose in the reopening of the agreement under
9 subparagraph (A) of this paragraph.

10 “(d) This section shall not apply with respect to flexible
11 schedules that may be established without regard to the au-
12 thority provided under this subchapter.

13 **“§ 6132. Prohibition of coercion**

14 “(a) An employee may not directly or indirectly intimi-
15 date, threaten, or coerce, or attempt to intimidate, threaten,
16 or coerce, any other employee for the purpose of interfering
17 with—

18 “(1) such employee’s rights under sections 6122
19 through 6126 of this title to elect a time of arrival or
20 departure, to work or not to work credit hours, or to
21 request or not to request compensatory time off in lieu
22 of payment for overtime hours; or

23 “(2) such employee’s right under section
24 6127(b)(1) of this title to vote whether or not to be in-
25 cluded within a compressed schedule program or such

1 employee's right to request an agency determination
2 under section 6127(b)(2) of this title.

3 “(b) For the purpose of subsection (a), the term ‘intimi-
4 date, threaten, or coerce’ includes, but is not limited to,
5 promising to confer or conferring any benefit (such as ap-
6 pointment, promotion, or compensation), or effecting or
7 threatening to effect any reprisal (such as deprivation of ap-
8 pointment, promotion, or compensation).

9 **“§ 6133. Regulations; technical assistance; program review**

10 “(a) The Office of Personnel Management shall pre-
11 scribe regulations necessary for the administration of the pro-
12 grams established under this subchapter.

13 “(b)(1) The Office shall provide educational material,
14 and technical aids and assistance, for use by an agency in
15 connection with establishing and maintaining programs under
16 this subchapter.

17 “(2) In order to provide the most effective materials,
18 aids, and assistance under paragraph (1), the Office shall con-
19 duct periodic reviews of programs established by agencies
20 under this subchapter particularly insofar as such programs
21 may affect—

22 “(A) the efficiency of Government operations;

23 “(B) mass transit facilities and traffic;

24 “(C) levels of energy consumption;

25 “(D) service to the public;

1 “(E) increased opportunities for full-time and part-
2 time employment; and

3 “(F) employees’ job satisfaction and nonworklife.

4 “(c) With respect to employees in the Library of Con-
5 gress, the authority granted to the Office of Personnel Man-
6 agement under this subchapter shall be exercised by the Li-
7 brarian of Congress.”.

8 (b) The table of sections at the beginning of such chap-
9 ter is amended—

10 (1) by inserting before the item relating to section
11 6101 the following:

 “SUBCHAPTER I—GENERAL PROVISIONS”;

12 and

13 (2) by adding at the end thereof the following:

 “SUBCHAPTER II—FLEXIBLE AND COMPRESSED WORK SCHEDULES

 “Sec.

 “6120. Purpose.

 “6121. Definitions.

 “6122. Flexible schedules; agencies authorized to use.

 “6123. Flexible schedules; computation of premium pay.

 “6124. Flexible schedules; holidays.

 “6125. Flexible schedules; time-recording devices.

 “6126. Flexible schedules; credit hours; accumulation and compensation.

 “6127. Compressed schedules; agencies authorized to use.

 “6128. Compressed schedules; computation of premium pay.

 “6129. Administration of leave and retirement provisions.

 “6130. Application of programs in the case of negotiated contracts.

 “6131. Criteria and review.

 “6132. Prohibition of coercion.

 “6133. Regulations; technical assistance; program review.”.

14 SEC. 3. Section 3401(2) of title 5, United States Code,
15 is amended by inserting “(or 32 to 64 hours during a biweek-
16 ly pay period in the case of a flexible or compressed work

1 schedule under subchapter II of chapter 61 of this title)"
2 after "week".

3 SEC. 4. (a) Except as provided in subsection (b), each
4 flexible or compressed work schedule established by any
5 agency under the Federal Employees Flexible and Com-
6 pressed Work Schedules Act of 1978 (5 U.S.C. 6101 note) in
7 existence on the date of enactment of this Act shall be con-
8 tinued by the agency concerned.

9 (b)(1) During the 90-day period after the date of the
10 enactment of this Act, any flexible or compressed work
11 schedule referred to in subsection (a) may be reviewed by the
12 agency concerned. If, in reviewing the schedule, the agency
13 determines in writing that—

14 (A) the schedule has reduced the productivity of
15 the agency or the level of services to the public, or has
16 increased the cost of the agency operations, and

17 (B) termination of the schedule will not result in
18 an increase in the cost of the agency operations,
19 the agency shall, notwithstanding any provision of a negotiat-
20 ed agreement, immediately terminate such schedule and such
21 termination shall not be subject to negotiation or to adminis-
22 trative review (except as the President may provide) or to
23 judicial review.

24 (2) If a schedule established pursuant to a negotiated
25 agreement is terminated under paragraph (1), either the

1 agency or the exclusive representative concerned may, by
2 written notice to the other party within 90 days after the
3 date of such termination, initiate collective bargaining per-
4 taining to the establishment of another flexible or compressed
5 work schedule under subchapter II of chapter 61 of title 5,
6 United States Code, which would be effective for the unex-
7 pired portion of the term of the negotiated agreement.

8 SEC. 5. The amendments made by this Act shall not be
9 in effect after three years after the date of the enactment of
10 this Act.

○